Supreme Court, U.S.
FILED
OCT 6 1980

No. 80-5361

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

WINIFRED M. GOUDIE,
Appellant,

v.

MARY HACKMAN & AMANDA ELLIS
Appellees,

On Appeal from the

Supreme Court of Virginia

MOTION TO DISMISS

Mary Cook Hackman
Pro Se
Amanda R. Ellis
Pro Se
Suite 501
2009 North 14th Street
Arlington, Va 22201

TABLE OF CONTENTS

		Page
1.	Questions	2
2.	Statement	3
3.	Argument	4
4.	Conclusion	6

TABLE OF AUTHORITIES

Cases:

North Dakota-Montana Wheat Growers Assn vs U. S. 291 US 672 — 5

Miscellaneous

16 American Jurisprudence 2d Constitutional Law — 5

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

No. 80-5361

WINIFRED M. GOUDIE,
Appellant,

v.

MARY HACKMAN & AMANDA ELLIS
Appellees,

On Appeal from the
Supreme Court of Virginia

MOTION TO DISMISS

Appellees, Hackman & Ellis, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move the Court to dismiss this appeal on the following grounds:

1. That the Appellant lacks standing to bring the appeal.
2. That the appeal rests on unsubstantial grounds.

QUESTIONS PRESENTED

1. Can the Appellant appeal a provision of the Code of Virginia, on the grounds that the said law compels the eviction under Deed of Trust before foreclosure sale and before payment of the proceeds of such sale, when the Appellant was not evicted before the foreclosure or before the payment of the proceeds.

2. Does the Appellant have the right to appeal when she had adequate notice and an opportunity to be heard before eviction and foreclosure.

3. Does the Appellant have standing to appeal her case, on the grounds of a denial to pro se litigants the equal protection and due process guaranteed by the 14th Amendment, without any evidence that she was so denied.

STATEMENT OF THE CASE

1. The foreclosure of which Appellant complains, was under a Second Deed of Trust, arranged for Appellant at her request. Appellant came to her attorney, Mary Cook Hackman, for help in saving Appellant's home from foreclosure by Guardian Federal Savings & Loan under her First Deed of Trust. The Second Deed of Trust loan was made to Appellant on February 22, 1979, in the amount of $25,000.00, for a period of one year, with monthly payments of interest only required, payment in full to be made on February 22, 1980. Appellant was, at that time, well informed about foreclosure sales by virtue of the imminent threat of foreclosure under the first Deed of Trust. She stated that if she could get the second Deed of Trust loan, she would put her house on the market in the spring of 1979, when sales could be expected to be good.

2. Appellant paid the monthly payments on the Second Deed of Trust, until October, 1979, after which she made no further payments.

3. Hackman & Ellis, as trustees, on instruction from the Noteholders to proceed with the foreclosure, advertised the property subject to the Second Deed of Trust for sale, and proceeded to sell the property at public auction at 12:30 p.m. on February 4, 1980, subject to the first Deed of Trust.

4. Notice of the foreclosure sale was mailed to Appellant on January 8, 1980, by U.S. registered mail, return receipt requested. That return receipt indicated the Notice was received by the addressee on January 14, 1980, signing the name "Goudie".

5. Appellant returned to Virginia prior to February 3, 1980.

6. Appellant did not vacate the premises until April, 1980, a month after the transfer of the property to the new owners, and after the payment of the proceeds to the Appellant in full.

7. On February 4, the same day as the foreclosure, Appellant appeared before the Circuit Court of Arlington County, Virginia, seeking an order restraining the Trustees from holding the foreclosure sale. The hearing lasted from 9:30 a.m. until 12:05 p.m., her motion was denied and the judge continued the matter until Friday, February 8, 1980, at 10:00 a.m. for entry of the order.

8. On February 8, 1980, Appellant failed to appear in the Circuit Court of Arlington County for the entry of the order of the February 4th hearing.

9. On March 5, 1980, Appellant appeared before the Circuit Court of Arlington County, Virginia, seeking to restrain the Trustees from going to settlement with the purchasers at the foreclosure sale; again, the Court denied her request. The hearing lasted in excess of one half hour.

10. On March 19, 1980, Appellant petitioned the Supreme Court of Virginia for review of her Motions for

Restraining Order against the Trustees. The Court heard oral arguments on the Petition and denied the relief Appellant had requested. Appellant took up two thirds of the half hour allotted by the Court for the hearing.

11. Again, in April, Appellant petitioned the Supreme Court of Virginia for a review of that Court's action in refusing her earlier petition. The Court denied this petition without hearing oral argument.

ARGUMENT

1. Appellant claims protection under the 4th Amendment of the Constitution of the United States against unreasonable seizure by the State--by eviction from her home under a Deed of Trust before foreclosure and before payment of the proceeds of a sale by the foreclosure.

Appellant was not evicted from her home before the foreclosure sale or before payment to her of the proceeds of such sale, and so was not injured. Absent a showing of injury, there can be no constitutional argument. 16 American Jurisprudence 2d, Constitutional Law paragraph 188.

2. Appellant queries whether the State of Virginia denies the right of adequate notice and an opportunity to be heard to defaulter before the eviction and foreclosure sale of defaulter's property under a Deed of Trust, which included in its terms 55-59 and 55-60 of the Code of Virginia.

Timely notice of the sale was given Appellant as required by §55-59(6) of the Code of Virginia, by registered U.S. mail, the receipt for which was signed by Appellant and dated January 14, 1980; thus she had both legal and actual notice 20 days prior to the sale. The rule is well settled that one who voluntarily proceeds under a statute and claims benefits thereby conferred

will not be heard to question its constitutionality. 16 American Jurisprudence 2d, Constitutional Law paragraph 209; North Dakota-Montana Wheat Growers Assn. vs. U.S., 66 F 2d 573, cert. den. 291 U.S. 672.

3. Appellant queries whether Virginia Courts deny to pro se litigants the equal protection and due process guaranteed to them by the 14th Amendment to the United States Constitution.

Appellant does not assert that she was denied relief because she had appeared pro se, but only poses a hypothetical question as to all pro se litigants generally. Nor does she claim to have been injured thereby. On each occasion when she appeared in Court the Court gave her its full time and attention.

CONCLUSION

Appellees Hackman & Ellis respectfully submit that for the reasons set out above, Appellant presents no substantial question for the decision of this Court and therefore, this Honorable Court should dismiss this appeal.

Mary Cook Hackman
Pro Se
Amanda R. Ellis
Pro Se
Suite 501
2009 North 14th Street
Arlington, Va 22201

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that three copies of the aforesaid document were on this 6 day of October, 1980, mailed, first class postage prepaid to: Winifred M. Goudie, Appellant, Pro Se, 3114 North Ninth Road, Arlington, Virginia 22201.

Mary Cook Hackman
Pro Se
Amanda R. Ellis
Pro Se
Suite 501
2009 North 14th Street
Arlington, Va 22201